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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,172	12/31/2003	Nicholas Zarkades	Z20-001	5025
34021	7590	01/31/2005	EXAMINER	
GEORGE A. HERBSTER 40 BEACH STREET SUITE 303 MANCHESTER, MA 01944			LE, MARK T	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 01/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/750,172	ZARKADES, NICHOLAS	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 5,7,17 and 19 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-3,6,8-15,18 and 20-25 is/are rejected.
- 7) Claim(s) 4 and 16 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/16/04</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

Species I - shown in Figures 1-4B; and

Species II - shown in Figures 5-8.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, at least claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

2. During a telephone conversation with Mr. Herbster on January 11, 2005 a provisional election was made with traverse to prosecute the invention of Species I, claims 1-4, 6, 8-16, 18 and 20-25. Affirmation of this election must be made by applicant in replying to this Office action. Claims 5, 7, 17 and 19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 14, 15, 18, 21-23 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Burke (US 2002/0129552).

Burke (Figures 4-6) shows a gate having all the features as recited in the instant claims, including first hollow member 46 and second member 48 telescopically received in the first hollow member.

Regarding the instant claimed internal stop member for limiting the displacement of the second member, consider the drive system for the second member, as shown in Figure 4 of Burke, wherein, at least some of the associated drive components mounted in the hollow member and on the second member are also readable as internal stop

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members because the second member of Burke inherently can not travel beyond a service distance defined by the positions of such associated drive components.

Regarding the instant claimed bearing means, recited in instant claim 15, consider bearing means 68, 70, 72 of Burke.

Regarding the instant claimed light recited in claim 21-22, consider lights 80, 82, 84 of Burke.

Regarding the instant claimed light on the exterior of the hollow member, as recited in instant claim 23, note that light 80, 82, 84 shown in Figure 6 of Burke are readable as being exteriorly of hollow member 46.

Regarding the instant claimed method of forming by extruding, as defined in instant apparatus claim 25, note that such claimed method does not define a structural difference between the instant claimed structure and the structure of Burke; therefore, the instant claimed method is not considered to define the instant claimed apparatus over the prior art structure.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 6, 9-11, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Worland (US 827,772) in view of Burke (US 2002/0129552).

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Worland discloses a gate for a railroad crossing; however, the gate of Worland is not constructed with features as recited in the instant claims.

The gate features of Burke are described above.

In view of Burke, it would have been obvious to one skilled in the art to modify the gate of Worland to include a telescoping feature and accessories, in a manner similar to that taught by Burke, so as to enhance safety at the railroad crossing.

Regarding the instant claimed gate being sloping downward in the blocking position, consider Figure 2 of Worland; wherein, gate 2 is shown to be slightly sloping downward.

7. Claims 8 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 above, and further in view of any one of Bishchoff (US 5,603,856), Tyler (3,852,570), Rutherford (US 6,194,685) and Thomas (US 4,792,659).

It is noted that Worland's structure, as modified, does not include a heater device and a thermostat to prevent ice formation, note that the concept of providing a heating device including a thermostat in a structure that may be exposed to icing weather, for preventing ice formation that could inhibit proper operations of the structure, is a common knowledge. Note the references to Bishchoff, Tyler, Rutherford, and Thomas, which are cited herein as an exemplary to illustrate that such common knowledge is widely known in varieties of applications. Accordingly, it would have been obvious to one skilled in the art to apply a similar concept to the structure of Worland by providing a similar well known heating device including a thermostat in the structure of Worland,

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as modified, at the location on the structure where icing may pose a problem so as to maintain proper operations of Worland's structure during an icing weather.

8. Claims 12 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claims 1 and 14 above, and further in view of Smith (US 494,390).

It is noted that the foot for supporting gate 2 of Worland, as shown in Figure 2 of Worland, is located at the remote free end of the gate; therefore, when the gate of Worland is made in the form of a telescoping gate, as modified above, it would have been obvious to one skilled in the art to still maintain the foot at such remote free end of the gate so as to provide support for the entire length of gate.

Regarding the instant claimed foot being rotatable, consider the hinge connection for the gate foot of Smith. In view of Smith, it would have been obvious to one skilled in the art to provide a hinge connection for the gate foot of Worland, in a manner similar to that taught by Smith, so as to allow the gate to fold when not in use.

9. Claims 4 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Le whose telephone number is 703-308-3663. The examiner can normally be reached on Mon-Fri (8:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 703-308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Mark T. Le
Primary Examiner
Art Unit 3617

mle
1/18/04